

Assembly Bill No. 2212

Passed the Assembly August 17, 2010

Chief Clerk of the Assembly

Passed the Senate August 11, 2010

Secretary of the Senate

This bill was received by the Governor this _____ day
of _____, 2010, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to add Section 709 to the Welfare and Institutions Code, relating to minors.

LEGISLATIVE COUNSEL'S DIGEST

AB 2212, Fuentes. Minors: mental competency.

Existing statutory law, in counties that agree to be subject to these provisions pursuant to a resolution adopted by the board of supervisors, provides that when it appears to the court, or upon request of the prosecutor or counsel, that a minor who is alleged to come within the jurisdiction of the juvenile court as a person who is or may be found to be a ward of the juvenile court may have a serious mental disorder, is seriously emotionally disturbed, or has a developmental disability, the court may order that the minor be referred for evaluation by a licensed mental health professional.

Existing court rules provide that if the court finds that there is reason to doubt that a child who is the subject of a petition to declare the child a ward of the juvenile court is capable of understanding the proceedings or of cooperating with the child's attorney, the court is required to stay the proceedings and conduct a hearing regarding the child's competence. If the court believes that a child who comes within that description is mentally disabled or may be mentally ill, the court may stay the proceedings and order that the child be taken to a facility for an evaluation, as specified.

This bill would authorize, during the pendency of any juvenile proceeding, the minor's counsel or the court to express a doubt as to the minor's competency. The bill would provide that a minor is incompetent to proceed if he or she lacks sufficient present ability to consult with counsel and assist in preparing his or her defense with a reasonable degree of rational understanding, or lacks a rational as well as factual understanding, of the nature of the charges or proceedings against him or her. The bill would require proceedings to be suspended if the court finds substantial evidence raises a doubt as to the minor's competency. The bill would require the court to appoint an expert, as specified, to

evaluate whether the minor suffers from a mental disorder, developmental disability, or developmental immaturity, or other condition and, if so, whether the condition impairs the minor's competency. The bill would require the Judicial Council to develop and adopt rules to implement these requirements. The bill would require that, if the minor is found to be incompetent by a preponderance of the evidence, all proceedings remain suspended to determine whether there is a substantial probability that the minor will attain competency in the foreseeable future or the court no longer retains jurisdiction.

The people of the State of California do enact as follows:

SECTION 1. Section 709 is added to the Welfare and Institutions Code, to read:

709. (a) During the pendency of any juvenile proceeding, the minor's counsel or the court may express a doubt as to the minor's competency. A minor is incompetent to proceed if he or she lacks sufficient present ability to consult with counsel and assist in preparing his or her defense with a reasonable degree of rational understanding, or lacks a rational as well as factual understanding, of the nature of the charges or proceedings against him or her. If the court finds substantial evidence raises a doubt as to the minor's competency, the proceedings shall be suspended.

(b) Upon suspension of proceedings, the court shall order that the question of the minor's competence be determined at a hearing. The court shall appoint an expert to evaluate whether the minor suffers from a mental disorder, developmental disability, developmental immaturity, or other condition and, if so, whether the condition or conditions impair the minor's competency. The expert shall have expertise in child and adolescent development, and training in the forensic evaluation of juveniles, and shall be familiar with competency standards and accepted criteria used in evaluating competence. The Judicial Council shall develop and adopt rules for the implementation of these requirements.

(c) If the minor is found to be incompetent by a preponderance of the evidence, all proceedings shall remain suspended for a period of time that is no longer than reasonably necessary to determine whether there is a substantial probability that the minor will attain competency in the foreseeable future, or the court no longer retains

jurisdiction. During this time, the court may make orders that it deems appropriate for services that may assist the minor in attaining competency. Further, the court may rule on motions that do not require the participation of the minor in the preparation of the motions. These motions include, but are not limited to:

- (1) Motions to dismiss.
- (2) Motions by the defense regarding a change in the placement of the minor.
- (3) Detention hearings.
- (4) Demurrers.
- (d) If the minor is found to be competent, the court may proceed commensurate with the court's jurisdiction.
- (e) This section applies to a minor who is alleged to come within the jurisdiction of the court pursuant to Section 601 or 602.

Approved _____, 2010

Governor